118 Group limited

# GDPR and Compliant Data for Business






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# About Us

### 118 Group Limited

With headquarters in Sutton Coldfield, 118 Group are the leading provider of B2B wholesale business data and marketing data solutions in the UK. Market Location, 118 Data Resource (118 Information), Cardwell Marketing Ltd and IDS Data Services Ltd (trading as Intelligent Data Group) are all part of the 118 Group.

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### Market Location

***Leading provider of business data and database solutions***

Market Location specialise in UK B2B business data and marketing data solutions. With over 40 years of experience in the database and direct marketing industry, Market Location have developed an in-depth understanding of data requirements and sophisticated database analysis techniques.

Whether the requirement is a bespoke data solution or a supply of business data for marketing – Market Location are the UK's leading provider of B2B data with their market leading position built upon superior data quality and service, combined with marketing data expertise and innovative technology.

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### 118 Information

***Pre-eminent supplier of wholesale business data in the UK***

Data assets have unparalleled coverage of UK business population with prestigious clients across a range of specialisms – from credit, direct marketing, major search engines, online directories – all looking for the best UK business data available.

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### Cardwell Marketing Limited

***B2B database service and solutions provider***

Based in Leamington Spa Cardwell pride themselves on their wealth of experience and expertise in the B2B data arena; and also, their solution based approach to increasingly complex data and data management issues for large businesses.

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### IDS Data Services Limited

***B2B direct marketing and database service provider***

This team, based in Glasgow have an exciting range of experience and knowledge of the B2B data industry and are renowned for their excellent account management skills that ensures a loyal and sustained customer base.

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## Introduction

118 Group are specialist b2b data providers in the UK with over 40 years of experience. We license business information to businesses for marketing and data management purposes. With our dedicated team of data experts 118 Group are fully compliant with the requirements as set out in **the General Data Protection Regulation ("GDPR")**.

**From 25th May 2018 all businesses in the EU will need to comply with the GDPR which is directly concerned with the collection, storage and use of personal data.**

**MAY-2018**

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*This document addresses the issues most frequently asked and outlines the approach that 118 Group has adopted on data processing under GDPR. The following is for information and guidance only – 118 Group would recommend any business also seeks independent legal advice.*

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## Background

The storage and handling of data has for many years been governed by **the Data Protection Act 1998 ("DPA")** but from May 2018 this will be replaced by the GDPR – which will provide a far more robust set of rules for the collection, storage and processing of personal information. The GDPR is a regulation rather than a directive which means it is a single piece of legislation that applies across all EU member states (and as the UK will still be a member of the EU in 2018 it therefore applies to the UK in the same way). In respect of electronic marketing communications there are additional rules that come from the **Privacy and Electronic Communications Regulations 2003 ("PECR")**, and with the introduction of the GDPR this is also now in the process of being revised.

## What is the impact of GDPR?

Every organisation that holds personal data will be affected by GDPR – that includes personnel records, customer details, sales and marketing prospect information, online identifier data etc. Organisations will be accountable to the data protection supervisory authorities (in the UK this is the Information Commissioner's Office). Whilst the accountability is not a new requirement, GDPR requires all organisations to record and document compliance with all applicable aspects of GDPR. The Regulation gives individuals more rights in respect of their data, including more control and visibility of how their personal data is being used, and the right to have that information removed or moved if requested.



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## What is Personal Data?

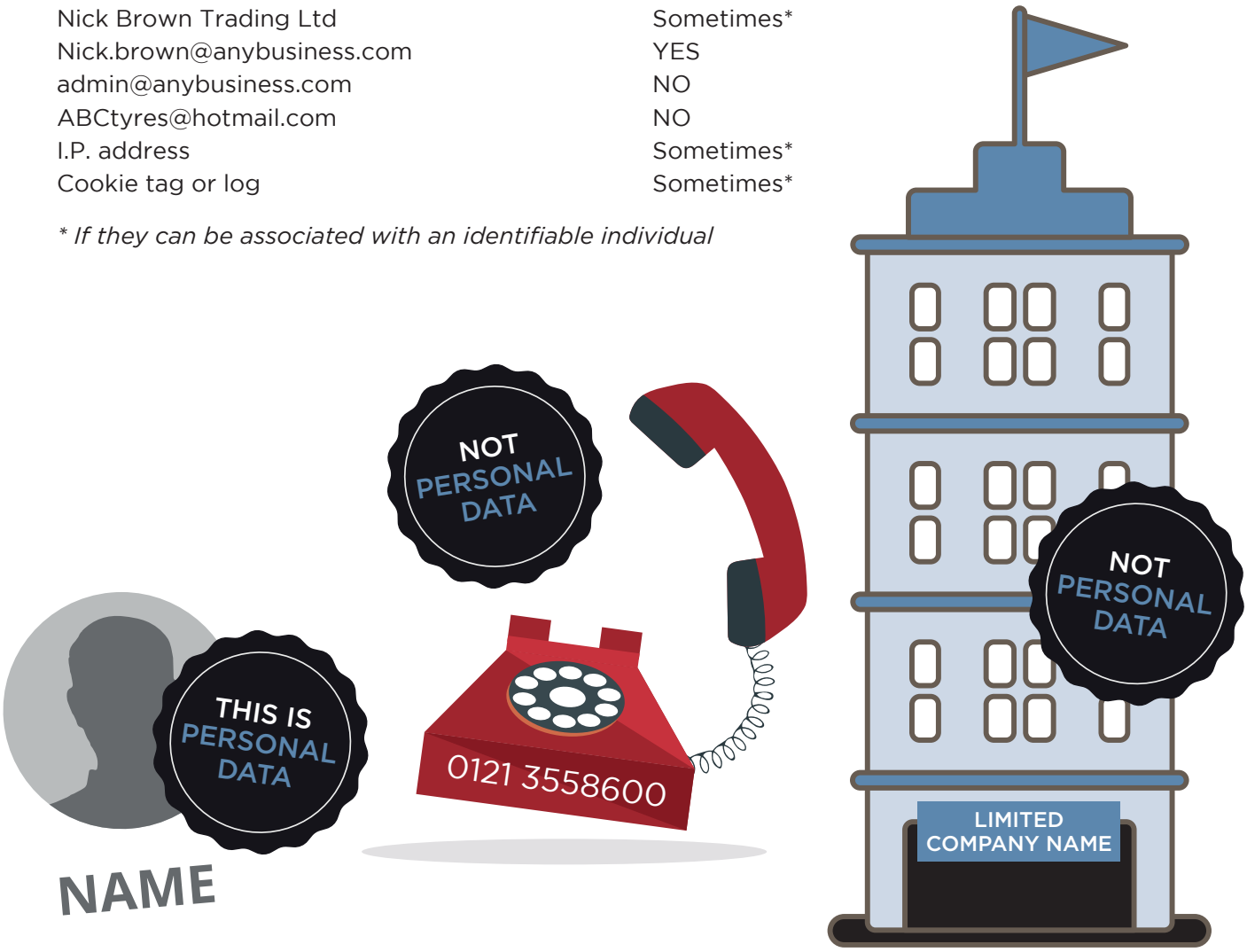
**Definition of Personal Data – Article 4(1)**

*"Personal data means any information relating to an identified or identifiable natural person (data subject); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person."*

Examples of personal data include elements such as name, address, gender, date of birth, but personal data can also include other less obvious identifiers such as IP addresses. Basically, personal data applies to any data from which a living individual (data subject) could be identified.

| Data | Personal Data? |
|---|---|
| 118 Information Ltd | NO |
| 62 Anchorage Road | NO |
| Paul Spinks, Managing Director | YES |
| 0121 3558600 | NO |
| ABC tyres (Ltd or not) | NO |
| Nick Brown Plumbing Services (where company is an unincorporated business) | YES |
| Nick Brown Trading Ltd | Sometimes* |
| Nick.brown@anybusiness.com | YES |
| admin@anybusiness.com | NO |
| ABCtyres@hotmail.com | NO |
| I.P. address | Sometimes* |
| Cookie tag or log | Sometimes* |

** If they can be associated with an identifiable individual*

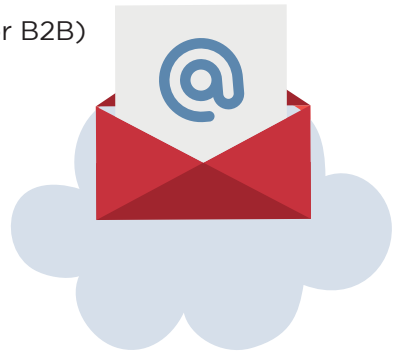



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## Lawful Grounds for Processing Personal Data

GDPR is concerned with the collection, storage and processing of personal data – for the use of that data and in respect of electronic marketing communications there are additional rules that come from the Privacy and Electronic Communications Regulations 2003 (**"PECR"**), and with the introduction of the GDPR this is also now in the process of being revised.

| Example | GDPR/PECR |
|---|---|
| Collecting data | GDPR |
| Storing data on a database or in a CRM system | GDPR |
| Processing data (analysing or profiling) | GDPR |
| Creating a marketing list or campaign list | GDPR |
| Loading a list into a dialler or email delivery system | GDPR |
| Sending a mailshot | None (for B2B) |
| Sending an email or SMS | PECR |
| Tracking cookies or IP addresses | PECR |
| Making a phone call | PECR |

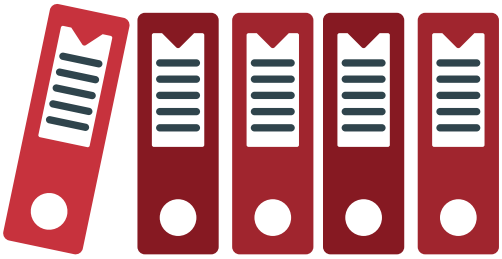


PECR

**There are 6 lawful grounds that can be used for the processing of personal data under GDPR:**

1. Processing is necessary for the **performance of a contract** with the data subject or to take steps to enter into a contract.
2. Processing is necessary for **compliance with a legal obligation**.
3. Processing is necessary to **protect the vital interests** of a data subject or another person.
4. Processing is necessary for the performance of a task carried out **in the public interest or in the exercise of official authority** vested in the controller.
5. Necessary for the purposes of **legitimate interests** pursued by the controller or a third party, except where such interests are overridden by the interests, rights or freedoms of the data subject. (Note that this condition is not available to processing carried out by public authorities in the performance of their tasks.)
6. **Consent** of the data subject.

GDPR

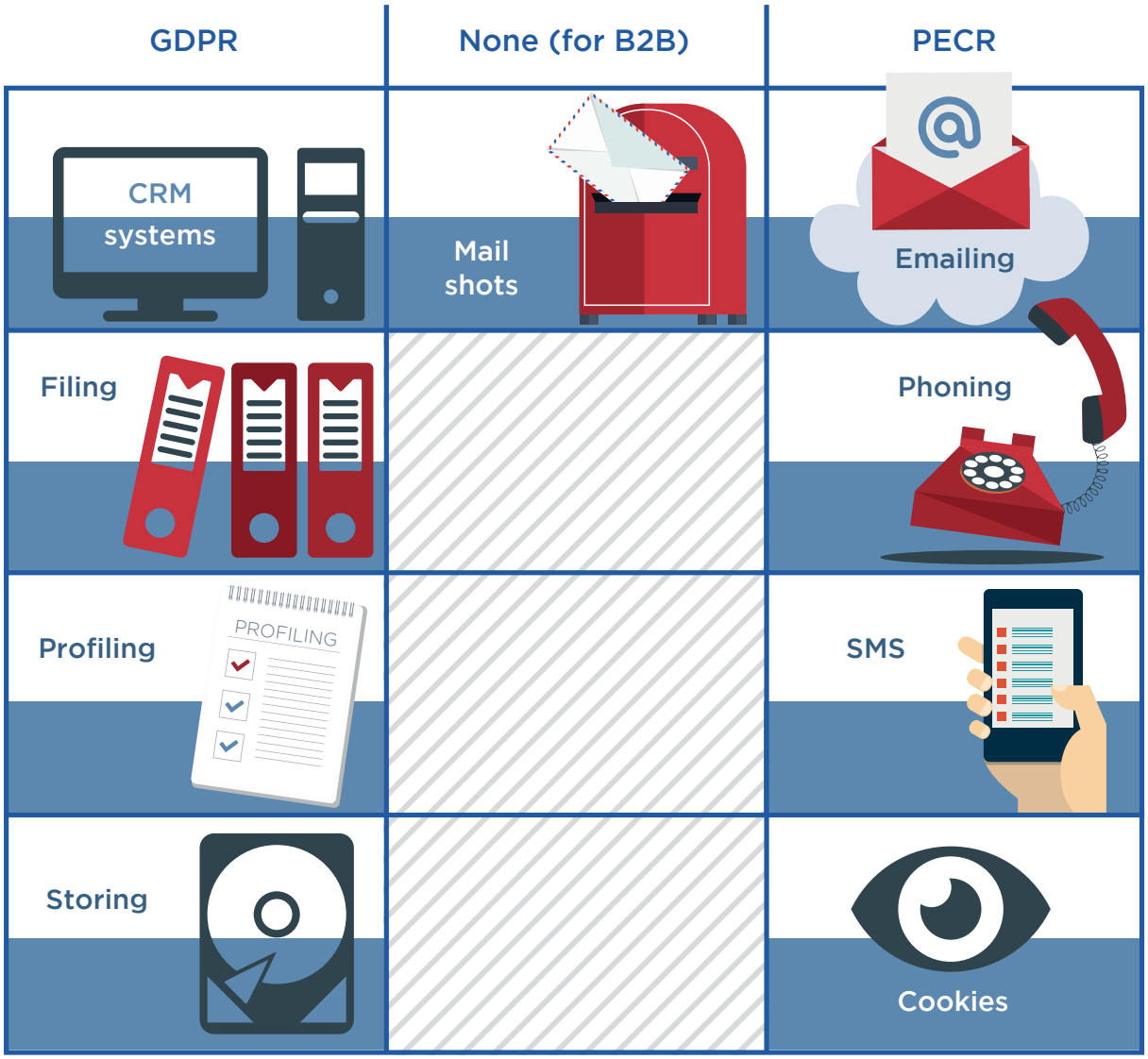


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## PECR and GDPR

**PECR (Privacy and Electronic Communications Regulations)** are the rules that relate to electronic marketing communications such as email and SMS. These are in addition to the requirements under the GDPR. (118 Group do not supply data for the purposes of marketing via SMS so the below relates only to email marketing).

- PECR treats the use of email for marketing communication differently depending on whether it is sent to 'individual subscribers' or to 'corporate subscribers'.
- **'Individual subscribers'** include those working for unincorporated entities such as sole traders and partnerships.
- The rules require that electronic mail for direct marketing purposes sent to **individual subscribers** must be based on a prior consent obtained from such individuals.
- **'Corporate subscribers'** consist of those working for companies and other incorporated organisations, such as LLPs.
- PECR allows electronic direct marketing communications to be sent to corporate subscribers (business email addresses of individuals working for incorporated entities) without prior consent, unless the recipient specifically requests not to receive emails from the sender (**"opt-out"**). Each direct marketing email should include an "unsubscribe" option to allow the individual to notify the sender that he/she no longer wishes to receive emails from the sender.




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## Legitimate Interest

*'The legitimate interests of a controller, including those of a controller to which the Personal Data may be disclosed, or of a third party, may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, taking into consideration the reasonable expectations of data subjects based on their relationship with the controller...* **The processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest.'**
**Recital 47**

Recitals 47 to 50 provide examples of where a controller may have a Legitimate Interest to process data that would also need to be supported via a Legitimate Interest Assessment (LIA).

## 118 Group Position

Each legal basis for processing personal data has it's own merits and needs to be considered carefully. There is no hierarchy, one legal basis is not 'better' than another, and the ICO advises businesses to examine the most appropriate legal basis for each business.

**For 118 Group 'consent' as a lawful basis for processing personal data is unrealistic. Two areas specifically make it untenable:**

1. Be specific and granular so that you get separate consent for separate things. Vague or blanket consent is not enough.
2. Name any third-party controllers who will rely on the consent.

Listing every single product or service our clients, current and potential, may offer would be impossible. Similarly, our sophisticated network of clients would make naming at the point of consent impossible.

118 Group's view is that it is reasonable to rely on legitimate interest as grounds for the processing of personal data for direct marketing purposes, given the very limited amount of personal information being processed; the fact that it is being used solely for the purposes of marketing to the business for which the individual works and not the individual him/herself; and that the individuals concerned are likely to be people within the organisation who would expect to be contacted for business communications.

**In summary:**

- Provision of personal data by 118 Group to its customers is based on legitimate interest.
- Legitimate interest should equally apply to the use of personal data by 118 Group's clients, subject to PECR rules and the client's own assessment of this lawful ground for processing of personal data.

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## 118 Group Process

118 Group seek to speak directly to businesses in order to enhance the quality of data offered to our customers. If an individual objects (opts-out) to 118 Group storing and using his/her personal data, then the personal data is removed from the 118 Group database.

If 118 Group are not able to speak to the individual contact then the information obtained is held and passed on to 118 Group's clients on the grounds of legitimate interest.

*"The legitimate interests can be your own interests or the interests of third parties. They can include commercial interests, individual interests or broader societal benefits."*
**Information Commissioner's Office (ICO)**

## What does relying on legitimate interest involve?

GDPR requires each organisation to carry out an assessment (and document it) of which lawful grounds for processing of personal data apply to its processing activities.

### Relying on legitimate interest involves:

1. Establishing the interest of the organisation – this could be for example promoting goods or services offered by the organisation. Processing for direct marketing purposes is specifically mentioned in the GDPR;

2. Carrying out a necessity test – this requires consideration of whether there is another way of achieving the interest, without having to use the personal data. Even if there is another way, but it would require disproportionate effort, the necessity could still be established. You need to consider - is there a way to make direct marketing communication with the correct contacts within an organisation without holding their personal data? It is unlikely that there would be another proportionate way of making direct marketing communications without the necessity to use personal data; and

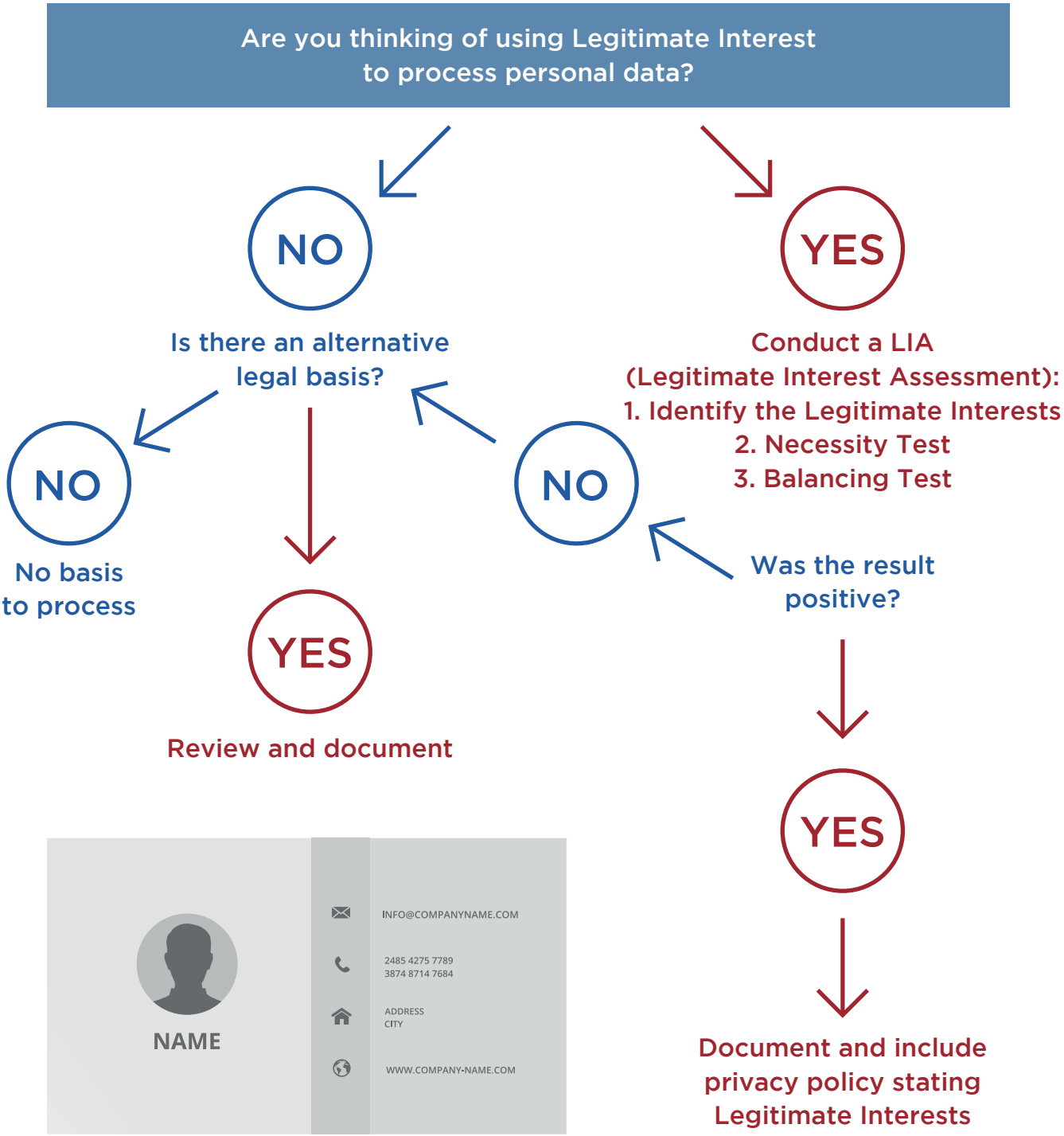
3. Balancing the interest of the organisation against the fundamental rights of the data subjects and whether the use of their personal data by the organisation could have a significant impact on their fundamental rights. In the context of b2b direct marketing, where communications relate to business services rather than the personal life of the individuals receiving the communications, it is unlikely that the fundamental rights of such individuals would be impaired. Those communications need to be measured and unobtrusive.

You, the client, can only control and process 118 Group data on the basis of Legitimate Interest until such time that an alternative legal basis is established. (You do not have consent to control and process the data until you have gained consent, prior to that you are doing so under Legitimate Interest). You do not have to control and process the personal data you hold on the same legal basis however you do need to document the legal basis for each personal data element.

You will have to gain express permission to email Individual Subscribers. You can do this as part of a phone call so long as the business is not on TPS/CTPS. However, that data continues to be held under license by 118 Group.

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## The Legitimate Interests Test




If a controller wants to rely on Legitimate Interest the balance between the interests of the controller and the rights of the individual must be considered. To do this a Legitimate Interest Assessment (LIA) must be conducted.

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# Legitimate Interest Assessment (LIA)

**This is a 3 stage process:**

### 1 Identify and establish your interest

- Why do you want to process the data – what are you trying to achieve?
- Who benefits from the processing? In what way?
- Are there any wider public benefits to the processing?
- How important are those benefits?
- What would the impact be if you couldn't go ahead?
- Would your use of the data be unethical or unlawful in any way?

### 2 Carry out a necessity test.

- Is it a reasonable way to go about it?
- Is there another less intrusive way to achieve the same result?

### 3 Conduct a balancing test

- What is the nature of your relationship with the individual?
- Would people expect you to use their data in this way?
- Can you adopt any safeguards to minimise the impact?
- Can you offer an opt-out?



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## Legitimate Interest Sample Questions

| Identifying Legitimate Interests | | |
|---|---|---|
| **Question** | **Answer** | **Comments** |
| What is the purpose for processing the data? | | |
| What are your objectives? | | |
| Who benefits from the processing? | | |
| What is the importance of those benefits? | | |
| What is the impact of not being able to proceed with the processing? | | |

| Necessity Test | | |
|---|---|---|
| **Question** | **Answer** | **Comments** |
| List the reasons the processing is important to the data controller? | | |
| Is this a reasonable way to process data? | | |
| Is there an alternative way to achieve the same results? | | |

| Balancing Test | | |
|---|---|---|
| **Question** | **Answer** | **Comments** |
| What is your relationship with the subject? | | |
| Is any of the data 'sensitive'? | | |
| Would the data subject expect their data to be used in this way? | | |
| Might the data subject object or find the processing intrusive? | | |
| What is the possible impact on the individual? | | |

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**Key References:**

Article 6(1) Lawfulness of processing – (a) relates to consent; (f) relates to legitimate interest.
Recital 47 – "The processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest."
DMA - https://dma.org.uk/article/10-things-b2b-marketers-need-to-know-about-the-gdpr-and-data-protection
ICO – www.ico.org.uk
Recital 29 Working Party - Guidance on Consent